

## **Air Resources Board**

Alan C. Lloyd, Ph.D. Chairman





May 9, 2000

# Public Consultation Meeting to Discuss Revisions to the Asbestos Airborne Toxic Control Measure for Surfacing Applications

Dear Sir/Madam:

On February 4, 2000, the Air Resources Board (ARB or Board) staff held a public consultation meeting to solicit comments on the January 10, 2000, draft revisions to the Airborne Toxic Control Measure for Naturally-Occurring Asbestos (Asbestos ATCM). The draft Asbestos ATCM addressed asbestos emissions from the use of asbestos-containing aggregate in unpaved surfacing applications, as well as quarrying/surface mining operations and construction/grading activities in areas with naturally-occurring asbestos. The comments received at the public consultation meeting and in subsequent meetings with various stakeholders were constructive and informative.

To adequately address the complexity of the issues, we have decided to separate the draft Asbestos ATCM into two separate regulatory activities. The first regulatory activity is to pursue amendments to the control measure adopted by the Board in 1990, which limits the asbestos content of serpentine aggregate used in unpaved surfacing applications to 5 percent or less. We are planning to present proposed amendments to this control measure for our Board's consideration at the July 20, 2000, public hearing. To solicit your comments, we will hold a public consultation meeting to discuss the enclosed proposed amendments entitled "The Asbestos Airborne Toxic Control Measure for Surfacing Applications." The time and place for the public consultation meeting are as follows:

Date: Tuesday, May 23, 2000 Time: 2:00 p.m. to 4:00 p.m. Location: Air Resources Board (ARB)

Lower Level Board Hearing Room

2020 L Street

Sacramento, California 95814

The focus of this meeting is to discuss this proposal that prohibits the use of serpentine and asbestos-containing ultramafic aggregate for unpaved surfacing applications. A copy of the proposed revisions is enclosed for your review. A copy of the proposed draft ATCM is also available on the ARB website located at <a href="https://www.arb.ca.gov/toxics/asbestos.htm.">www.arb.ca.gov/toxics/asbestos.htm.</a>

California Environmental Protection Agency

#### Sir/Madam

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The second regulatory activity is to develop a new airborne toxic control measure which will contain regulatory requirements for quarrying/surfacing mining operations and construction/grading activities in areas with naturally-occurring asbestos. We plan to present this regulatory proposal to our Board this November. Since this is a separate regulatory activity, we will be scheduling a public consultation meeting in the near future to discuss proposed requirements for quarrying/surface mining operations and construction/grading activities.

We invite your participation at the May 23<sup>rd</sup> public consultation meeting. If you cannot attend the meeting and would like to provide comments, or if you have questions regarding this meeting, please call Mr. Victor Douglas of my staff at (916) 327-5980, or e-mail a message to him at <a href="mailto:vdouglas@arb.ca.gov">vdouglas@arb.ca.gov</a>.

The meeting facility is accessible to persons with disabilities. If accommodations are needed, please contact Ms. Linda Keifer at (916) 327-1505 by May 18, 2000. Persons with hearing or speech impairments can contact us by using our Telephone Device for the Deaf (TDD) at (916) 342-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

Sincerely,

Daniel E. Donohoue, Chief Emissions Assessment Branch Stationary Source Division

Enclosure

CC:

Mr. Victor Douglas
Air Resources Engineer
Emissions Evaluation Section
Stationary Source Division

Ms. Linda Keifer Emissions Assessment Branch Stationary Source Division

# California Environmental Protection Agency Air Resources Board

## **Agenda**

### Public Consultation Meeting to Discuss Draft Revisions to the Asbestos Airborne Toxic Control Measure For Surfacing Applications

May 23, 2000 2:00 p.m. to 4:00 p.m. Lower Level Board Hearing Room 2020 L Street Sacramento, California 95814

1.	Introduction and Welcome	2:00 p.m.
2.	Background	2:15 p.m.
3.	Proposed Revisions	2:30 p.m.
4.	Open Discussion	2:45 p.m.
5.	Workshop Adjourns	4:00 p.m.

Times are approximate and the schedule may differ depending on the length of the discussion for each topic.

#### FINAL REGULATION ORDER

## ASBESTOS AIRBORNE TOXIC CONTROL MEASURE FOR ASBESTOS-CONTAINING SERPENTINE FOR SURFACING APPLICATIONS

Section 93106. Asbestos Airborne Toxic Control Measure — Asbestos-Containing Serpentine for Surfacing Applications.

- (a) Definitions. For the purposes of this section, the following definitions shall apply:
  - (1) "Aggregate" means a mixture of mineral fragments, sand, gravel, rocks, or similar minerals.
  - (2) "Alluvial deposit" means any deposit of sediments laid down by running water including but not limited to streams and rivers.
  - (3) "Approved asbestos bulk test method" means ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the Air Resources Board.
  - (4) "ARB" means the California Air Resources Board.
  - (5) "ARB Test Method 435" means the test method specified in Title 17, California Code of Regulations, section 94147.
  - "Asbestos" means asbestiforms of the following hydrated minerals: chrysotile (fibrous serpentine), crocidolite (fibrous riebeckite), amosite (fibrous cummingtonite--grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite.
  - (7) "Asbestos-containing material" means any material that has an asbestos content of 0.25 percent or more as determined by an approved asbestos bulk test method
  - (5) "Asbestos-containing serpentine material" means serpentine material that has an asbestos content greater than five percent (5.0%) as determined by ARB Test Method 435.

- (8) "Asbestos geologic assessment" means a geologic evaluation of a property conducted by a registered geologist to determine the presence of asbestos, asbestos-containing material, or ultramafic rock.
- (9) "District" means any air pollution control or air quality management district created or continued in existence pursuant to Part 3 (commencing with section 40000), Division 26, Health and Safety Code.
- (10) "Executive Officer" means the Executive Officer of the ARB, the executive officer or air pollution control officer of any district, or designee thereof.
- (11) "Non-wearing surface" means any non-road surface that has an incline greater than twenty (20) percent, including, but not limited to, the use of riprap, road cuts, or soil stabilization.
- (12) "Owner/operator" or "person" includes, but is not limited to, an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation including, but not limited to, a government corporation. "Owner/operator" or "person" also includes any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law. "Owner/operator" or "person" also includes a project proponent and any of its contractors and subcontractors.
- (13) "Producer" means any person that extracts and processes aggregate material from the ground.
- "Receipt" means any written acknowledgement that a specified amount of serpentine, serpentine material, or ultramafic rock was received, delivered, or purchased. Receipts include, but are not limited to, bills of sale, bills of lading, and notices of transfer.
- (15) "Registered geologist" means an individual that is currently licensed with the State of California, Department of Consumer Affairs, Board of Geology and Geophysicists as a geologist.
- (16) "Remote location" means any location that is at least one (1.0) mile from the location of a receptor, which includes, but is not limited to, hospitals,

schools, day care centers, work sites, businesses, residences, and permanent campgrounds. The distance of one (1.0) mile is to be measured from the outer most limit of the area to be disturbed or road surface, whichever is further.

- "Road surface" means the traveled way of a road and any shoulder which may extends up ten (10) feet from the edge of the traveled way.
- (18) "Sand and gravel operation" means any aggregate-producing facility operating in alluvial deposits.
- (19) "Serpentine" means any form of hydrous magnesium silicate minerals including, but not limited to, antigorite, lizardite, and chrysotile.
- "Serpentine material" is means any material that contains at least ten percent (10%) serpentine as determined by a registered geologist. The registered geologist must document precisely how the serpentine content of the material in question was determined.
- (21) "Serpentinite" means a rock consisting almost entirely of serpentine, although small amounts of other minerals such as magnetite, chromite, talc, brucite, and tremolite-actinolite may also be present.
- "Surfacing" means the act of covering any surface used for pedestrian, vehicular, or non-vehicular travel; or decoration, including, but not limited to, roads, road shoulders, streets, access roads, alleys, lanes, driveways, parking lots, playgrounds, trails, squares, plazas, and fairgrounds.
- (23) "Ultramafic rock" means an igneous rock composed chiefly of one or more iron/magnesium-rich, dark-colored minerals such as pyroxene, amphibole, and olivine; includes, but is not limited to serpentinite, dunite, peridotite, and pyroxenite.
- (b) Requirements for the use or sale of asbestos-containing-serpentine, serpentine material, ultramafic rock, and asbestos-containing material for surfacing.
  - (1) <u>Serpentine or Serpentine Material:</u> No person shall use or apply <u>serpentine or serpentine material for surfacing in California unless the</u>

material has been tested using ARB Test Method 435 and determined to have an asbestos content of five percent (5.0%) or less. A written receipt or other record documenting the asbestos content shall be retained by any person who uses or applies serpentine material, for a period of at least seven years from the date of use or application, and shall be provided to the Air Pollution Control Officer or his designee for review upon request.

- (2) <u>Ultramafic Rock:</u> No person shall use or apply ultramafic rock, excluding serpentine, for surfacing unless the material has been tested using an approved bulk test method and determined to have an asbestos content that is less than 0.25 percent. A written receipt or other record documenting the asbestos content shall be retained by any person who uses or applies ultramafic rock excluding serpentine, for a period of at least seven years from the date of use or application, and shall be provided to the Executive Officer or his designee for review upon request.
- (3) <u>Asbestos-Containing Material:</u> No person shall use any material for surfacing that has been tested at the request of the Executive Officer and found to have an asbestos content of 0.25 percent or more.

# (3)(c) Requirements for the sale or supply of serpentine, serpentine material, ultramafic rock, or asbestos-containing material:

- (1) Serpentine or Serpentine Material: No person shall sell, supply, or offer for sale serpentine or serpentine material for surfacing in California unless the serpentine material has been tested using ARB Test Method 435 and determined to have an asbestos content of five percent (5.0%) or less. Any person who sells, supplies, or offers for sale serpentine material that he or she represents, either orally or in writing, to be suitable for surfacing or to have an asbestos content that is five percent (5.0%) or less, shall provide to each purchaser or person receiving the serpentine material a written receipt which specifies the following information: the amount of serpentine material sold or supplied; the dates that the serpentine material was produced, sampled, tested, and supplied or sold; and the asbestos content of the serpentine material as measured by ARB Test Method 435. A copy of the receipt must, at all times, remain with the serpentine material during transit and surfacing.
- (2) *Ultramafic Rock*: No person shall sell, supply, or offer for sale ultramafic

rock, excluding serpentine, for surfacing unless the ultramafic rock has been tested using an approved asbestos bulk test method and determined to have an asbestos content that is less than 0.25 percent.

- (3) Requirements for Producers: Any producer of ultramafic rock, excluding serpentine, that he or she represents, either orally or in writing, as being suitable for surfacing, shall provide to each purchaser or person receiving the ultramafic rock a written receipt which specifies the following information:
  - (A) The amount of ultramafic rock sold or supplied;
  - (B) The dates that the ultramafic rock was sampled, tested, and supplied or sold; and
  - (C) That the asbestos content of the ultramafic rock is less than 0.25 percent.

A copy of the receipt must, at all times, remain with ultramafic rock during transit and surfacing.

- (4) Requirements for Persons Other than Producers: Any person, other than a producer, who sells, supplies, or offers for sale, ultramafic rock, excluding serpentine, that he or she represents, either orally or in writing, to be suitable for surfacing, shall provide to each purchaser or person receiving the ultramafic rock a written receipt that specifies the following information:
  - (A) The amount of ultramafic rock sold or supplied;
  - (B) That the asbestos content of the ultramafic rock is less than 0.25 percent.

A copy of the receipt must, at all times, remain with ultramafic rock during transit and surfacing.

(5) Asbestos-Containing Material: No person shall sell, supply, or offer for sale any material for surfacing that has been tested at the request of the Executive Officer and found to have an asbestos content of 0.25 percent or more.

(2)(6) Warning Notice: Any person who sells, supplies, or offers for sale serpentine; serpentine material; ultramafic rock that has not been tested; ultramafic rock that has been tested and found to have an asbestos content that of 0.25 percent or greater; or any material tested at the request of Executive Officer and found to have an asbestos content of 0.25 percent or greater in California shall provide with each sale or supply a written receipt containing the following statement:

"Serpentine material WARNING! This material may have an contain asbestos content greater than five percent (5.0%).

It is unlawful to use serpentine this material for surfacing or any application in which it would remain exposed and subject to possible disturbances in California. unless the material has been tested and found to contain less than or equal to five percent (5.0%) asbestos All tests for asbestos content must use California Air Resources Board Test Method 435, and a written record documenting the test results must be retained for at least seven years if the material is used for surfacing."

Extreme care should be taken when handling this material to minimize the generation of any dust."

- (7) Requirements for Recordkeeping: Any person who sells, supplies, or offers for sale serpentine, serpentine material, ultramafic rock shall retain for a period of at least seven years from the date of sale or supply, copies of all receipts and copies of any analytical test results from asbestos testing of the serpentine material ultramafic rock. All receipts and test results shall be provided to the Air Pollution Control Officer Executive Officer or his designee for review upon request.
- (8) Executive Officer Authority to Require Testing: The Executive Officer may require the testing for asbestos content of any material represented as being suitable or used for surfacing.
- (5) If ARB Test Method 435 has been used to perform two or more tests on any one volume of serpentine material, whether by the same or a different

person, the arithmetic average of these test results shall be used to determine the asbestos content of the serpentine material.

#### (d) Exemptions.

- (1) <u>Sand and Gravel Operations</u>: The provision of subdivisions (b)(2)(1) and (b)(2), and (c)(1) through (b)(5)(c)(4) shall not apply to <u>aggregate</u> extracted from sand and gravel operations.
- (2) Roads located at Surface Mining Operations: The provisions of subdivision (b)(1) shall not apply to roads located at serpentine quarries, asbestos mines, quarries or mines located in serpentine deposits that are in ultramafic rock units or asbestos mines, provided the material was obtained on site from the quarry or mine property.
- (3) Maintenance Operations on Existing Roads: The provisions of subdivision (b)(1) shall not apply to maintenance operations on any existing road surfaces, or to the construction of new roads in serpentine deposits, as long as no additional asbestos-containing serpentine material is applied to the road surface.
- Officer may issue a temporary exemption from the requirements of subdivisions (b)(1) and (c) to an applicant who demonstrates that a road repair is necessary due to a landslide, flood, or other emergency and that the use of material other than serpentine is not feasible for this repair. The air pollution control officer Executive Officer shall specify the time during which such exemption shall be effective, provided that no exemption shall remain in effect longer than six (6) months 90 days.
- (4) Bituminous and Concrete Materials: The provisions of subdivisions (b)(1) and (c) shall not apply to serpentine, serpentine material, or ultramafic rock that is an integral part of bituminous concrete, portland cement concrete, bituminous surface, or other similar cemented materials.
- (5) <u>Landfill Operations</u>: The provisions of subdivision (b)(1) shall not apply to landfill operations other than the surfacing of public-access roads dedicated to use by vehicular traffic.
- (6) Geologic Assessment: The Executive Officer may provide an exemption

from subdivisions (c)(2) through (c)(7) for aggregate composed of ultramafic rock other than serpentine provided a registered geologist has conducted an asbestos geologic assessment of the property from which the aggregate was obtained and determined that asbestos is not likely to be found in any of the ultramafic rock located on the property. The owner/operator shall provide a written copy of the asbestos geologic assessment to the Executive Officer for his consideration when providing this exemption.

- (7) Non-wearing surfaces: The Executive Officer may provide an exemption from the provisions of subdivisions (b) and (c)(1) through (c)(5) for the use of aggregate on non-wearing surfaces provided that the owner/operator can demonstrate that:
  - (A) The aggregate will be obtained within one mile of its application;
  - (B) There are no cost-effective alternative aggregate available; and
  - (C) The surface is not located in an area zoned or identified in a land use plan for civic and resource protection, residential, or commercial use;
- (8) Remote locations: The Executive Officer may provide an exemption from the provisions of subdivisions (b) and (c)(1) through (c)(5) provided that:
  - (A) The own/operator can demonstrate that:
    - 1. The surface is located in a remote location;
    - 2. The aggregate used is obtained within one (1.0) mile of the application of the aggregate; and
    - 3. There are no reasonably available alternative compliant aggregate.
  - (B) In providing this exemption, the Executive Officer shall:
    - Consider the following information: county land use plans,
       the current use of the surrounding land, and the current and anticipated zoning designations;

- 2. Provide public notice and solicit comments for a 30-day period before providing this exemption; and
- Require that any surface exempted pursuant to this
   subdivision be posted with a permanent sign alerting the
   public to potential asbestos exposures.

#### (e) Test Methods

- (1) ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the Air Resources Board shall be used to determine compliance with this section.
- If ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the Air Resources Board has been used to perform two or more tests on any one volume of serpentine material, whether by the same or a different person, the arithmetic average of these test results shall be used to determine the asbestos content of the serpentine the test results indicating the greater amount of asbestos shall be used to determine the presence of asbestos in the material.

NOTE: Authority cited: Sections 39600, 39601, 39650, 39666, and 41511, Health and Safety code. Reference: Sections 39650, 39666, and 41511, Health and Safety Code.